IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

WP(C).No. 2792 of 2007(G)

AGAINST THE ORDER DATED IN EP 9 2004 IN OS.68/1989 of PRINCIPAL SUB COURT, PALAKKAD
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PETITIONER:

GOVINDANKUTTY M.K., S/O.JANAKY AMMA,
AGED 70 YEARS, MANJALOOR KOOTTAKODE HOUSE,
KIZHAKKEKULAMBU, POONTHONI,
VADAVANNUR P.O., PALAKKAD DISTRICT.

BY ADV. SRI.O.V.MANIPRASAD
SRI.ANOOP MATHEW ABRAHAM

RESPONDENTS:
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1. GURUVAYOORAPPAN, S/O.JANAKY AMMA,
MANJALOOR KOOTTAKODE HOUSE,
PADINJAREKULAMBU, POONTHONI,
VADAVANNUR P.O., PALAKKAD DISTRICT.

2. BALAKRISHNAN, S/O.JANAKY AMMA,
MANJALOOR KOOTTAKODE HOUSE,
PADINJAREKULAMBU, POONTHONI,
VADAVANNUR P.O., PALAKKAD DISTRICT.

3. MOHANAN, S/O.JANAKY AMMA,
MANJALOOR KOOTTAKODE HOUSE,
PADINJAREKULAMBU, POONTHONI,
VADAVANNUR P.O., PALAKKAD DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 2792 OF 2007

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Dated this the 2nd day of February, 2007.

J U D G M E N T

This writ petition is preferred seeking to set aside the order of delivery and issue a direction to the Subordinate Judge, Palakkad to consider the objections raised by the petitioner in Ext.P2 and pass fresh orders.

2. I had perused the objections in Ext.P2. The suit is one for partition and a final decree is passed by the Court. After the passing of the final decree an execution petition is filed for delivery of the property. Now, the dispute is regarding the identification and impracticability and other aspects regarding partition of the properties by metes and bounds. It is a settled principle that the executing Court is not competent to act beyond the decree. There were several stages for the parties to agitate the matters that are sought to be raised now. When the Amin had gone to deliver the property, again the question of identification was raised and in order to properly identify and effect delivery of the property the trial court directed that a surveyor is to be appointed to demarcate the properties. So

whatever is possible to give legal effect to and implement the directions in the final decree is taken by the Court below at the stage of execution. It is also very important to state that in spite of making a statement as early as on 6th October, 2004 that the party wants to file an appeal before the Appellate Court against the final decree I am informed that so far no appeal has been preferred. So, as the matter stands, there is a final decree. This is to be put in execution if any of the parties moves in that direction. Executing Court had taken into consideration the objections and when it found that the identification of the property is necessary and it has ordered so by deputing the surveyor. Therefore, there is nothing to interfere with the order of the executing Court. So, the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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